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8                   **UNITED STATES DISTRICT COURT**  
9                   **SOUTHERN DISTRICT OF CALIFORNIA**

10                   11CR1270-LAB

11                   FRANCISCO XAVIER ROJAS-  
12                   SANCHEZ,

13                   Petitioner,  
14                   vs.  
15                   Respondent.

16                   CASE NO. 11-CV-2668-LAB  
17                   **ORDER DENYING 28 U.S.C. §**  
18                   **2255 HABEAS PETITION**

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20                   UNITED STATES,

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28                   Rojas-Sanchez is currently serving a 63-month sentence for conspiracy to import cocaine and methamphetamine. See *United States v. Rojas-Sanchez*, 11-CR-1270-LAB. Now before the Court is his habeas petition brought pursuant to 28 U.S.C. § 2255, through which he seeks a sentence reduction. He seeks the reduction on the ground that, due to his alien status, he is ineligible for early release into a halfway house (and other penal benefits) in violation of his Fifth and Fourteenth Amendment rights to due process and equal protection. This is a familiar claim that aliens make in federal habeas petitions, using (or guided by) what appears to be a form pleading, and the Court has consistently rejected it.

To state an equal protection claim, a plaintiff must allege he was treated differently from other similarly situated persons, see *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985), and deportable aliens are not "similarly situated" to United States citizens. It is not an equal protection violation to allow United States citizen-inmates, who must re-

1 enter domestic society, to participate in rehabilitative or other programs while denying that  
2 privilege to deportable inmates. See, e.g., *Santos v. United States*, 940 F.Supp. 275, 281  
3 (D. Hawaii 1996) (one's status as deportable alien, which may result in ineligibility for less  
4 restrictive terms of confinement, cannot justify downward departure; plaintiff failed to state  
5 an equal protection claim "because deportable aliens are not 'similarly situated' to United  
6 States citizens"). The Supreme Court "has firmly and repeatedly endorsed the proposition  
7 that Congress may make rules as to aliens that would be unacceptable if applied to citizens."  
8 *Demore v. Kim*, 538 U.S. 510, 521-22 (2003).

9        This Court has previously rejected the claim that an alien's ineligibility for various  
10 prisoner programs or benefits violates that person's rights. See *Rendon-Inzunza v. United*  
11 *States*, 2010 WL 3076271 (S.D. Cal. 2010); *Lizarraga-Lopez v. United States*, 89 F.Supp.2d  
12 1166 (S.D. Cal. 2000). Those holdings stand. The purpose of halfway houses is to  
13 facilitate the reintegration of prisoners into the community, but prisoners in Rojas-Sanchez's  
14 position are released first to the Attorney General and then to a foreign community.  
15 Moreover, halfway houses are still custodial institutions wherein prisoners serve out their full  
16 sentences, and from which deportable aliens would be a unique flight risk.

17 No due process or equal protection issue arises merely because a defendant's alien  
18 status excludes him from certain programs available to citizens, within the prison system or  
19 without. Accordingly, Rojas-Sanchez's argument that the Court should consider his request  
20 for an additional downward departure on that basis is rejected. His habeas petition is  
21 accordingly **DENIED**. The Court also **DENIES** him a certificate of appealability. See 28  
22 U.S.C. § 2253(c)(2).

24 || IT IS SO ORDERED.

25 || DATED: January 24, 2013

Larry A. Bunner

**HONORABLE LARRY ALAN BURNS**  
United States District Judge